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No. 82-629

In the Supreme Court of the United States

October Term, 1982

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION,
Petitioner,

vs.

WOLD ENGINEERING, P.C., A NORTH DAKOTA PROFESSIONAL CORPORATION,
Respondent,

vs.

SCHMIDT, SMITH & RUSH,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF NORTH DAKOTA

HUGH McCUTCHEON
(Counsel of Record)
P.O. Box 939
Minot, North Dakota 58702
(701) 852-3578
Attorney for Respondent Wold Engineering

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3055

I. QUESTION PRESENTED FOR REVIEW

Whether the North Dakota State District Courts have subject matter jurisdiction to hear a civil action arising within the exterior boundaries of an Indian Reservation, and involving Indian litigants, where the Indian tribe within that reservation has failed to consent to the assumption of civil jurisdiction by the state courts.

II. PARTIES TO THE PROCEEDINGS

The parties to this proceeding are:

Three Affiliated Tribes of the Fort Berthold Reservation, Petitioner;

Wold Engineering, P.C., a North Dakota Professional Corporation, and Schmidt, Smith & Rush, Respondents.

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IV. OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

The Opinion and Judgment of Dismissal from the North Dakota District Court, Northwest Judicial District, in Ward County, Civil No. 46392, is an unreported decision.

Judgment of the North Dakota Supreme Court affirming the decision of the North Dakota District Court is reported at: *Three Affiliated Tribes v. Wold Engineering, et al.*, 321 N.W.2d 510 (N.D. 1982).

V. JURISDICTIONAL STATEMENT

Petitioner asserts that jurisdiction of this Court to review this case by Writ of Certiorari is conferred by 28 U.S.C. Section 1257(3). Petitioner asserts that the final judgment of the North Dakota Supreme Court draws into question the validity of 25 U.S.C. Section 1322(a). It further asserts that the validity of Chapter 27-19, NDCC, Indian Civil Jurisdiction, is called into question as being repugnant to the United States Constitution, treaties or laws.

A Writ of Certiorari is timely if filed within 90 days after the issuance of the decision being appealed. 28 U.S.C. Section 2101(c). The decision of the North Dakota Court was issued on July 1, 1982, and became final on July 23, 1982. Petitioner's Petition for Writ of Certiorari was docketed in the United States Supreme Court on September 28, 1982.

VI. CONSTITUTIONAL PROVISIONS AND STATUTES

A. United States Constitutional Provisions:

Article 1, Section 8, Clause 3.

"The Congress shall have power: . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Amendment 14, Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

B. Federal Statutes:

25 U.S.C. Section 1322(a).

"(a) Consent of United States—Force and effect of civil laws. The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State."

25 U.S.C. Section 1326.

"State jurisdiction acquired pursuant to this title [25 USCS §§1321-1326] with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call

such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults."

C. State Constitutional Provisions and Statutes:

Chapter 27-19, NDCC, Indian Civil Jurisdiction. (Set forth in Appendix 1.)

VII. STATEMENT OF THE CASE

Petitioner, an Indian tribe, and hereafter referred to as Three Tribes, contracted with Respondents, hereafter referred to as Wold Engineering, for the purposes of designing a water system for the Four Bears Village. Four Bears Village is located entirely within the exterior boundaries of the Fort Berthold Indian Reservation. The enrolled members of Three Tribes have not voted to consent to the assumption of civil jurisdiction by the State Courts of North Dakota.

After the water system was completed, Three Tribes initiated a lawsuit against Wold Engineering alleging the system was negligently designed. Suit was commenced in North Dakota District Court.

After submitting its Answer and asserting a counterclaim against Three Tribes, Wold Engineering moved to dismiss the case for lack of subject matter jurisdiction. The Honorable Wallace D. Berning, District Judge, accepted briefs from all parties, and after due consideration dismissed the case for lack of subject matter jurisdiction.

Three Tribes appealed this decision to the North Dakota Supreme Court which affirmed Judge Berning's ruling. Three Tribes makes this petition for Writ of Certiorari to seek review of the North Dakota Supreme Court Decision.

VIII. SUMMARY OF THE ARGUMENT

A petition for certiorari may be allowed when there is drawn into question the validity of a United States statute, or when there is drawn into question the validity of a state statute which may be repugnant to the Constitution, or to a United States statute. Certiorari is granted as a matter of discretion. Factors which this Court may consider when deciding to grant certiorari are that a state court decision is not consistent with decisions in other states, or that the state court decision is not consistent with the decisions of the United States Supreme Court. These factors are neither controlling nor complete.

Congress has plenary power over Indian tribes. When Congress directs a statute to that subject, the Indian tribes, the states, and the courts are absolutely bound thereby. A state response to a federal Indian statute which is consistent with the plain meaning and tenor of that statute is not violative of due process and equal protection.

The response of the United States to particular problems presented by Indian tribes to the Federal Government, and to the states in which they reside, has swung the pendulum from assimilation to self-determination and isolation. Depending upon the various attitudes taken by the states at different points of time along the swing of this pendulum, the response of the many individual states to the Indian tribes residing therein will be substantially different. Having an ever changing federal policy, and no uniform state response to that policy, has created a patchwork quilt of jurisdictional problems and judicial responses. The fact then that different states may assert varying claims to jurisdiction over the Indian tribes within those states is not significant. This variance was created by Congress, and should not give rise to Supreme Court

review of a state decision which differs from the decisions reached in other states.

The swing of the pendulum has been reflected in this Court's Indian decisions as well. While the Supreme Court has stated that state courts are generally open to Indians, those statements were made in relation to the then current Congressional response to Indian problems. When Congress, in the exercise of its plenary authority, changed its position to Indian matters this Court's response to that change in position was also reflected. This Court has held that unless the Indian tribes comply completely with the requirements set forth by Congress in regards to state civil jurisdiction over Indian matters on the reservation, the states can exercise no such jurisdiction, and the tribes cannot confer such jurisdiction. This Court's decision reflects the current federal response to state assumption of jurisdiction over Indians and Indian territory. Thus, a decision by a state court which is contrary to earlier cases, but which fully comports with the current federal position on Indian tribes is not inconsistent with this Court's decisions and will not give rise to Supreme Court review of that decision.

The Indian tribes in North Dakota have the keys to the State Courthouses in their hands. When the Indians elect to use these keys to unlock those doors, they may make use of the State's judicial system.

IX. ARGUMENT

A. Grounds for Granting Certiorari.

Final judgment from the highest court of a state in which a decision may be heard can be reviewed in the Supreme Court either by appeal, or by certiorari. Review by certiorari may be granted where:

". . . the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States." 28 U.S.C. 1257(3).

Three Tribes alleges the decision of the North Dakota Supreme Court is subject to review by certiorari. It states that the North Dakota Court's strict application of the requirements of 25 U.S.C. Section 1322(a), 25 U.S.C. Section 1326, and Chapter 27-19, NDCC, denying Indians living on an Indian reservation a civil cause of action in state courts has denied those Indians equal protection of the law. Three Tribe's argument would require this Court to find a valid statute was given a discriminatory application, or that there was an erroneous exercise of authority under a valid statute. In either instance, the decision might be subject to review by this Court under a Writ of Certiorari. *Charleston Federal Savings and Loan Ass'n v. Alderson*, 324 U.S. 182 (1945); *Hanson v. Denckla*, 357 U.S. 235 (1958).

B. There Was No Discriminatory Application of a Valid Statute in the North Dakota Court.

Three Tribes argues that the North Dakota Supreme Court's ruling requiring Indian tribes to strictly adhere to the requirements set forth in 25 U.S.C. Section 1322(a) and 25 U.S.C. Section 1326, and also to State requirements in Chapter 27-19, NDCC, Indian Civil Jurisdiction, will unfairly deny Indians access to the State's judicial system, and to the equal protection of the law.

The United States Congress has plenary power over Indian tribes. *Lonewolf v. Hitchcock*, 187 U.S. 553 (1903).

A state law is generally of no effect in Indian country located within its boundaries. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). In discussing briefly the history and relationship of the states to Indian tribes and Indian country, this Court has stated:

> "State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that state law shall apply. U.S. Department of Interior, Federal Indian Law 845 (1958)." *McClanahan v. Arizona Tax Comm.*, 411 U.S. 164, at 170 and 171 (1973).

Insofar as state civil jurisdiction in North Dakota over Indian lands within this State is concerned, Congress has expressly provided when state laws apply to Indians and Indian country. It has also provided a means by which state laws will be made applicable to Indians and Indian country. Those provisions, 25 U.S.C. Section 1322(a) and 25 U.S.C. Section 1326 require state and tribal bilateral action in accordance with the conditions and procedures laid out in those sections. Although the State of North Dakota has followed these requirements and has provided a mechanism by which Indian tribes may consent to state court assumption of civil jurisdiction, Section 27-19-02, NDCC, Three Tribes has failed to follow the guidelines laid out by Congress and also by the North Dakota legislature.

The North Dakota Supreme Court has ruled that Indian tribes must follow the requirements of Chapter 27-19, NDCC, absolutely before the state may take any jurisdiction in Indian country, and that Chapter 27-19, NDCC, is a complete disclaimer of all State jurisdiction in Indian country. *In re Whiteshield*, 124 N.W.2d 694 (N.D. 1963). The North Dakota Court also held the requirements of 25 U.S.C. Section 1322(a) and 25 U.S.C. Section 1326 must

be followed absolutely before the state courts may assume any civil jurisdiction in Indian country. *Gourneau v. Smith*, 207 N.W.2d 256 (N.D. 1973); *Nelson v. Dubois*, 232 N.W.2d 54 (N.D. 1975); and *United States ex rel. Hall v. Hansen*, 303 N.W.2d 349 (N.D. 1981). These cases, which were the precedents relied upon by the North Dakota Court in its decision in this case, are consistent with this Court's decisions in *McClanahan v. Arizona Tax Comm.*, 411 U.S. 164 (1973); and *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971). Those two cases affirm this Court's consistent position that when Congress exercises its authority and controls an Indian question, neither the states nor the Indian tribes are free to disregard that directive. Therefore, when Congress directs the states and tribes to take affirmative legislative action before a state may assume jurisdiction, that direction is not simply an idle choice of words. *Kennerly*, 400 U.S. at 427. Action by a tribe which does not explicitly comport with the exact requirements of a governing Act of Congress will not be sufficient to confer jurisdiction. *Kennerly*, 400 U.S. at 429.

In this case, Three Tribes has chosen to not follow the explicit course required by Congress. From this choice has followed, as a direct result, the State Court's refusal to allow Indians access to the state court system for acts occurring in Indian country. This consequence is entirely consistent with the plain meaning and obvious intention of 25 U.S.C. Section 1322(a), and 25 U.S.C. Section 1326. 25 U.S.C. Section 1322(a) is directed to all cases between Indians, or to which Indians are parties. The decisions of this Court which address this issue support the State Court's ruling.

It is from this consequence that Three Tribes objects, stating that such a consequence singles them out, and denies to them a forum which is available to all others within

the State of North Dakota. This, it declares, is a denial of equal protection.

This Court has held, however, that every piece of legislation pertaining to Indians of necessity singles those people out. This legislation creates special preferences or disabilities, but in no event is this special treatment a form of discrimination. These legislative preferences are political, and stem from the unique relationship which the Indians enjoy with the United States. *Morton v. Mancari*, 417 U.S. 535 (1974). The fact then that 25 U.S.C. Section 1322(a) singles Indians out for special treatment is not a novel problem, nor is it one which will give rise to a complaint.

Three Tribes declares however, that by singling the Indians out in this instance, Indians are denied access to state courts, and that this is a denial of equal protection. The State Court's reading of the requirements of Chapter 27-19, NDCC, and of 25 U.S.C. Section 1322(a) and 25 U.S.C. Section 1326 is consistent with the plain meaning and intention expressed in those statutes. This reading is fairly calculated to further the state's interest in providing in a uniform and orderly fashion civil jurisdiction in Indian country while at the same time allowing for tribal self government and justice in Indian country. Such state court considerations of Indian policies and federal laws are not denials of equal protection. *Washington v. Yakima Indian Nation*, 439 U.S. 463 (1979). Following these policies and laws may cause hardship for an Indian or an Indian tribe in a particular case, but such hardship is not a denial of equal protection.

Three Tribes further argues the intent of 25 U.S.C. Section 1301 et seq. was to protect individual Indians from the involuntary foisting of state court jurisdiction upon

them. From this, Three Tribes argues it is clear that the tribe itself is free to make use of the State's courts, and that it was wrong to deny it access, and this thereby denies the tribe, as an entity, equal protection.

This argument is wrong. This chapter of Title 25 U.S.C. was designed to prevent the states from unilaterally asserting their control over Indians and Indian tribes, and thereby destroying a tribe's power to make its own rules and be governed by them. *Kennerly v. District Court of Montana,* 400 U.S. 423 (1971). If 25 U.S.C. Section 1301 et seq. is to apply only to individual Indians, a state would then be free to approach Indian questions arising within the state by dealing with them on a tribal level: for example, while individual Indians would remain free from state taxation (*McClanahan v. Arizona Tax Comm.*, 411 U.S. 164 (1973).) a strictly tribal enterprise would not be exempt and could be freely taxed, just as any other corporate entity. Quite clearly, such an approach is far more devastating to a tribe's power to regulate its own internal affairs than a similar action taken against the individual. Such an approach is not what was intended when Congress passed this Act.

Further, in its argument to the North Dakota Court Three Tribes asserted the tribe itself is not subject to control by the state. Rules of procedure and substantive law could be used by the tribe to compel discovery, subpoena witnesses, and enforce its judgment. On the other hand, it argued that Wold Engineering would not be allowed to do the same on the reservation, nor could Wold Engineering maintain in state court its counterclaim. Hence Three Tribe's position is not consistent, and is patently unfair to non-Indian litigants.

The keys to the state courthouse have been placed in the hands of the Indian tribes in North Dakota by

virtue of the various state and federal laws. Three Tribes has had possession of these keys for nearly 20 years. Its failure to use these keys to unlock the courthouse doors is not an adequate reason to allow it to now enter the North Dakota Courthouse from the rear door while leaving the front door eternally locked.

The North Dakota Supreme Court did not apply a valid statute in a discriminatory fashion.

C. There Was No Erroneous Exercise of Authority Under a Valid Statute by the North Dakota Court.

As stated above, this Court may grant certiorari if there appears to have been an erroneous exercise of authority under a valid statute. When determining whether or not to grant review by certiorari this Court may take into consideration the factors listed in Rule 17.1, Rules of the Supreme Court of the United States. That list, while neither controlling nor conclusive, contains two factors for consideration which Three Tribes asserts will support the grant of a Writ of Certiorari in this case. Three Tribes asserts the decision of the North Dakota Court is not consistent with the decisions of other state supreme courts, and that the decision of the North Dakota Court is not consistent with the rulings of the United States Supreme Court. (See pages 8 and 10 of Petition).

1. Consistency of State Court decisions is not an important consideration in Indian cases.

The problem of having sovereign dependent nations located within the boundaries of this country has been a longstanding and difficult one. From the earliest *Cherokee* cases the policy of the United States has never been en-

tirely clear except in one facet, that is, Indians, while sovereign, are a conquered and dependent people and as such are subject to the plenary authority of Congress. *Lonewolf v. Hitchcock*, 187 U.S. 553 (1903).

Depending upon the attitude of the times, Congressional policy has ranged from either total assimilation of the Indian people into the non-Indian culture, or a total isolation of the Indian people from the non-Indian culture, thereby allowing the Indians to be totally self-governing of their destiny.

This ambivalent course of policy has created its own problem. That is, this ambivalence has swung like a pendulum from one policy directive to another. Depending upon where states have chosen to act along that policy pendulum, the relationship of the Indian tribes to the various states in which they are located will differ from state to state.

At the time North Dakota and many other western states entered the Union the policy of the federal government had swung into the area of isolation. Indians were placed on reservations and these western states, prior to entering the Union, had to constitutionally disclaim forever all jurisdiction to Indian lands. North Dakota was required to make such a disclaimer. Enabling Act of February 22, 1889, Chapter 180, 25 Statutes at Large 676, Section 4, Clause 2, and North Dakota Constitution Article 16, Section 203 (Constitution of 1889).

As time passed, Congressional policy swung and changes were adopted which allowed assimilation of the Indian nations into the non-Indian world. This assimilation policy was most clearly apparent in what is commonly known as Public Law 280, Chapter 505 U.S. Statutes at Large 67. By that law in 1953, Congress granted to some

states total jurisdiction over the Indian tribes within their boundaries. Other states were given the power to amend their constitutions and unilaterally assume some or all jurisdiction over the Indian tribes within their boundaries, regardless of tribal consent to such assumption. *Washington v. Yakima Indian Nation*, 439 U.S. 463 (1979). Depending upon the various state reactions to Public Law 280, some states assumed jurisdiction while others declined it. North Dakota amended its constitution, but never assumed jurisdiction. *In re Whiteshield*, 124 N.W.2d 694 (N.D. 1963). Hence, the option created by Congress created different results in different states.

As time passed, the pendulum swung back to the notions of self determination. 25 U.S.C. Section 1301 et seq. is the evidence of that decision. That chapter prohibits states which had not assumed jurisdiction under Public Law 280 from unilaterally assuming jurisdiction in Indian country. It is now established that the Indian tribes must comply with the requirements of 25 U.S.C. Section 1322(a) and 25 U.S.C. Section 1326 before any assumption of jurisdiction in Indian country by the states may occur. *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971).

Hence, depending upon the actions taken by the various states as the pendulum swung, the status of state jurisdiction in Indian country will differ. Three Tribes points to the state court decisions in other states, including North Dakota's neighbor Montana, and makes the point that the decision of the North Dakota Court is inconsistent with the decisions in those cases. Such a point is not significant. These differences exist as a result of the local reaction to the options made available by Congress throughout time. Congress has created a local problem in each state and at each Indian reservation. The response to those local problems will, of necessity, reflect local policy. As these

policies differ, so will the solutions. North Dakota's solution to the Indian jurisdictional problems within this state are not consistent with the solutions of its neighbors, but such an inconsistency is not grounds for review of the decision. The inconsistency simply reflects a fact Congress created. The local decision by the local court is not an erroneous exercise of authority.

2. The decision of the North Dakota Supreme Court is consistent with this Court's decisions.

Three Tribes asserts that the decision of the North Dakota Supreme Court is in conflict with the decisions of this Court as found in *Felix v. Patrick*, 145 U.S. 317 (1892), and *United States v. Candelaria*, 271 U.S. 432 (1926). These decisions cannot be pointed to with any conviction as being the final word from this Court on Indians using state courts. The language which Three Tribes relies upon in *Felix* is simply dictum, to which no great value as precedent can attach. *Candelaria* must likewise be given but slight value as precedent. That decision concerns the effect of a state court judgment on the United States as guardians for an Indian tribe, and does not deal directly with the question presented in this case.

However, it must also be recognized that these cases are now of only historical significance. The cases can not be taken out of their historical context to give meaning to today's decisions.

It must again be stated that it is Congress which has absolute plenary power over the Indian tribes. Any judicial decree or ruling must reflect the current Congressional will. Rulings from this Supreme Court made over 50 years ago must give way to later Acts of Congress which will reflect the prevalent national policy towards

Indians. Hence, the rulings of *Candelaria* and *Felix* must give way to the later expressions of Congress as stated in 25 U.S.C. Section 1301 et seq. Those expressions will require this court to disregard any rulings or dicta of those earlier cases and focus instead upon what Congress has declared to be the current status of the Indian law.

The current status of the law in reference to civil jurisdiction in Indian country is found at 25 U.S.C. Section 1301 et seq. 25 U.S.C. Section 1322(a) states that any state not already having jurisdiction (North Dakota is one such state) may only assume jurisdiction upon tribal consent to such assumption. The procedure for consent by a tribe is set out in 25 U.S.C. Section 1326. That statute requires a special election of the entire tribe to vote on this jurisdiction.

Three Tribes would urge this Court to rely upon *Felix* and *Candelaria* to completely ignore the provisions of this Act. It urges this Court to allow individual Indians, or Indian tribes, to use the state courts for any legal actions in which they are plaintiffs. An Indian tribe would then need to conduct tribal elections and comply with Section 1322(a) and Section 1326 of Title 25, only if they determined that they wished to allow themselves to be brought into state courts as defendants. In other words, the language of Section 1322(a) which refers to "actions between Indians or to which Indians are parties" would be interpreted by Three Tribes to mean "actions in which Indians are defendants." Indians and Indian tribes would be free to use state courts as plaintiffs without following the formalities of a tribal election outlined in 25 U.S.C. Section 1326. This reading is not consistent with the Court's rulings on these statutes, nor is it consistent with the plain meaning of the statute.

In interpreting this Congressional action, this Court has held that the meaning of the provisions of 25 U.S.C. Section 1322(a) and 25 U.S.C. Section 1326 is clear. That is:

> "We think the meaning of these provisions is clear: the tribal consent that is prerequisite to the assumption of state jurisdiction under the provisions of Title IV of the Act must be manifested by majority vote of the enrolled Indians within the affected area of Indian country." *Kennerly v. District Court of Montana*, 400 U.S. 423 at 429 (1971).

This Court in *Kennerly* further held that any action by a tribe which does not comport with the explicit requirements of the Act will not be sufficient to confer jurisdiction on the states.

The meaning of the federal statutes is clear. This Court has held that the obvious meaning of the words in those statutes must be explicitly followed or else an assumption by state courts of Indian civil jurisdiction will be of no avail. Further, the Indians themselves are not free to disregard the clear and explicit requirements of that Act. The North Dakota Supreme Court has followed the federal statutory mandate to the letter, and has ruled consistently with this Court on the meaning of the currently existing federal policy. Three Tribes now asserts that it should be free to ignore the currently stated federal policy, and the clear meaning of that policy. However, since the North Dakota Court has followed all federal mandates, there exists no reason why the decision of the North Dakota Supreme Court should be overruled. There was no erroneous exercise of authority.

X. CONCLUSION

A Writ of Certiorari will only be granted in the sound discretion of this Court. Failure by Three Tribes to reveal a valid reason why a state court decision should be reviewed is sufficient to deny a Writ of Certiorari. Wold Engineering requests therefore that Three Tribe's petition for Writ of Certiorari be denied.

Respectfully submitted this 26th day of October, 1982.

BOSARD, MCCUTCHEON & RAU, LTD.
Attorneys for Respondent
Wold Engineering
200 Heritage Place
P.O. Box 939
Minot, North Dakota 58702
By: Hugh McCutcheon

APPENDIX 1

CHAPTER 27-19

INDIAN CIVIL JURISDICTION

27-19-01. Assumption of jurisdiction.—In accorddance with the provisions of Public Law 280 of the 83rd Congress and section 203 of the North Dakota constitution, jurisdiction of the state of North Dakota shall be extended over all civil causes of action which arise on an Indian reservation upon acceptance by Indian citizens in a manner provided by this chapter. Upon acceptance the jurisdiction of the state shall be to the same extent that the state has jurisdiction over other civil causes of action, and those civil laws of this state that are of general application to private property shall have the same force and effect within such Indian reservation or Indian country as they have elsewhere within this state.

27-19-02. Method of acceptance.—Acceptance of jurisdiction may be by either of the following methods:

1. Upon petition of a majority of the enrolled residents of a reservation who are eighteen years of age or older; or
2. The affirmative vote of the majority of the enrolled residents voting who are eighteen years of age or older, at an election called and supervised by the North Dakota Indian affairs commission upon petition of fifteen percent of those eligible to vote at such an election.

27-19-03. Acceptance proclamation.—Upon acceptance of civil jurisdiction by either method provided in section 27-19-02 the executive director of the Indian af-

fairs commission shall certify such acceptance to the governor. Upon such certification the governor shall, within ten days, issue a proclamation proclaiming that thirty days from the date of the issuance of such proclamation the provisions of this chapter shall be in effect.

27-19-04. Effective date.—The provisions of this chapter shall affect only those causes of action which arise after the effective date of state jurisdiction as provided in section 27-19-03.

27-19-05. Individual acceptance.—An individual Indian may accept state jurisdiction as to himself and his property by executing a statement consenting to and declaring himself and his property to be subject to state civil jurisdiction as herein provided. Such jurisdiction shall become effective on the date of execution of such statement. The statement accepting state jurisdiction shall be filed in the office of the county auditor of the county in which the person resides and when so filed shall be conclusive evidence of acceptance of state civil jurisdiction as provided herein. (This section has been held ineffective under the supremacy clause of the United States Constitution and Public Law 90-284, 25 U.S.C. section 1322. *Nelson v. Dubois*, 232 N.W.2d 54 (N.D. 1975).)

27-19-06. Acceptance by guardian.—A guardian appointed by the tribal court or court of Indian offenses may consent to state civil jurisdiction for his ward provided he is authorized to do so by the tribal court or court of Indian offenses. (Public Law 90-284 changed the method by which states could assume civil jurisdiction over actions involving Indians and occurring within Indian country. No action has been taken in North Dakota in compliance with Public Law 90-284 and, consequently, North Dakota does not have jurisdiction over Indians residing within the exterior boundaries of an Indian reservation. Some pro-

visions of this chapter such as section 27-19-05 and possibly section 27-19-06 are no longer effective because of Public Law 90-284. *Malaterre v. Malaterre*, 293 N.W.2d 139 (N.D. 1980).)

27-19-07. Contempt powers.—In addition to other authority conferred by this chapter, the courts of this state shall have the power to hold persons in civil or criminal contempt of court in order to maintain the dignity of the courts and enforce their orders.

27-19-08. Limitations upon jurisdiction.—Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein. The civil jurisdiction herein accepted and assumed shall include but shall not be limited to the determination of parentage of children, termination of parental rights, commitments by county mental health boards or county judges, guardianship, marriage contracts, and obligations for the support of spouse, children, or other dependents.

27-19-09. Tribal ordinances and customs preserved.—Any tribal ordinance or custom heretofore or hereafter adopted by any Indian tribe, band, or community, in the exercise of any authority which it may possess shall, if not inconsistent with the applicable civil law of this state, be given full force and effect in the

determination of civil causes of action pursuant to this section.

27-19-10. Other benefits not affected.—The provisions of this chapter shall not be construed as requiring the extension of any health, welfare, educational or other governmental service to Indian reservations or Indian country, not otherwise required by the laws or constitution of this state.

27-19-11. Petition for withdrawal.—Civil jurisdiction as herein provided over an Indian reservation may be terminated by petition of three-fourths of the enrolled residents of a reservation who are eighteen years of age or older. Such petition shall be filed with the North Dakota Indian affairs commission.

27-19-12. Withdrawal proclamation.—Upon the filing of a petition for withdrawal from the civil jurisdiction of the state, the executive director of the North Dakota Indian affairs commission after substantiating that the provisions of section 27-19-11 have been complied with shall certify such withdrawal to the governor. Upon such certification the governor shall, within ten days, issue a proclamation proclaiming that thirty days from the date of the issuance of such proclamation the civil jurisdiction of the state shall be terminated except as to those causes of action which arose prior to the effective date of such termination or to those contractual obligations which were incurred prior to the effective date of such termination of state civil jurisdiction.

27-19-13. Individual withdrawal.—An individual who has accepted state civil jurisdiction under the provisions of section 27-19-05 may withdraw upon filing with the county auditor a statement declaring his withdrawal. Such withdrawal shall not affect causes of action which arose prior to such withdrawal or contractual obligations which were incurred prior to such withdrawal.